

## REMARKS

By entry of this amendment, the independent claims in the application have been amended to their original form. However, Claim 22 has additionally been amended to correct the typographical error noted by the Examiner.

The Examiner rejected all of the claims in the application under 35 U.S.C. 112, second paragraph, as being indefinite. The Examiner also rejected Claims 1, 2, and 22 under 35 U.S.C. 102(b) as being anticipated by the Pisula et al. reference. These rejections are respectfully traversed. A brief review of the recent prosecution history of this application is believed to be helpful in analyzing these rejections.

(1) On July 22, 2005, the Examiner (who had just assumed responsibility for this application) issued an Office Action that reopened prosecution of this application from an earlier appeal and instituted three new grounds of rejection. First, the Examiner rejected Claims 1-22 as being directed to non-statutory subject matter and as being inoperative. Second, the Examiner rejected Claims 1, 2, and 22 as being anticipated by the Pisula et al. reference. Third, the Examiner rejected Claim 22 as being obvious in view of the Pisula et al. reference.

(2) On October 21, 2005, a Reply Brief was filed in response to that Office Action that traversed each of these three grounds of rejection.

(3) On November 7, 2006, the Examiner issued an Office Action that again reopened prosecution of this application and instituted another new ground of rejection. The Examiner rejected Claims 1-18 and 22 as being directed to non-statutory subject matter. The Examiner suggested that "the system claims be amended to incorporate a processing device (e.g., a computer or similar limitation) in communication with the program modules of the claims."

(4) On March 7, 2007, an Amendment was filed that amended independent Claim 1, 16, and 22 in the manner suggested by the Examiner.

(5) On June 7, 2007, the Examiner issued the current Office Action and instituted yet another new ground of rejection (namely, that the amended claims were indefinite) and re-instituted the anticipation rejection of Claims 1, 2, and 22 as being

anticipated by the Pisula et al. reference, which was originally made almost two years earlier.

Regarding the Examiner's rejection of the claims under 35 U.S.C. 112, second paragraph, the independent claims in the application have been eliminate the references to the various units and modules as being provided on a computer (as previously suggested by the Examiner). Such amendments are believed to obviate the indefiniteness issues noted by the Examiner.

Regarding the Examiner's rejection of Claims 1, 2, and 22 as being anticipated by the Pisula et al. reference, the arguments made in the Reply Brief filed on October 21, 2005 are incorporated herein by reference. Additionally, however, it should be noted that the Examiner's rationale for the anticipation rejection is flawed on its face. Specifically, at the bottom of Page 4 of the Office Action, the Examiner stated that the Pisula et al. reference "is capable of (i) allowing a user to add one or more assets to the simulated fleet [and] (ii) generating a report having a composite output that corresponds to a parameter of the assets and is remote accessible to a user" (emphasis added).

It is well established that a "claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987) - see M.P.E.P. Section 2131. A claim is not anticipated if the reference is merely "capable of performing the intended functionality of the claimed apparatus" as alleged by the Examiner. Using that rationale, virtually no invention implemented on a computer would be patentable because the underlying computer apparatus is certainly "capable" of being programmed to function in the claimed manner. Thus, the rejection is inappropriate and should be withdrawn.

Furthermore, the Examiner's reference to Section 2111.02 (II) (second paragraph) of the M.P.E.P. is not understood. That section of the M.P.E.P. relates to the effect of preamble statements reciting purpose or intended use on claim interpretation. In this application, the preambles of the claims are not believed to be at

issue. Rather, as recited in independent Claim 1, the invention is an electronic system that includes (1) a simulated fleet configuration unit configured to allow a user to add one or more assets to the simulated fleet, each asset having a parameter associated therewith; (2) a reporting and analysis module configured to generate a report having a composite output that corresponds to the parameter and is characteristic of all of the assets in the simulated fleet; and (3) a communications interface configured to facilitate electronic remote access of the system by the user. These specifically recited structures do not reference the preamble of the claim. Clarification of the Examiner's position on this issue is respectfully requested.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Richard S. MacMillan", written over a horizontal line.

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